

**§ 58-10-380. Formation of captive insurance companies.**

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be any of the following:

- (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) Incorporated as a mutual corporation.
- (3) Organized as a reciprocal insurer in accordance with Article 15 of this Chapter.
- (4) Organized as a manager-managed limited liability company.

(b1) A special purpose captive insurance company may be organized and operated in any form of business organization authorized by the Commissioner.

(c) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company formed as a corporation, at least one of the members of the board of directors shall be a resident of this State. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this State. In the case of a captive insurance company formed as a limited liability company, at least one of the managers shall be a resident of this State.

(f) Captive insurance companies formed as corporations, limited liability companies, partnerships, or as nonprofit corporations under this Part shall have the privileges provided in and be subject to all State statutes and laws, as applicable, provided that this Part shall control in the event of a conflict.

(g) Mergers, consolidations, conversions, mutualizations, acquisitions, redomestications, or other similar transactions of captive insurance companies shall be subject to the same provisions of this Chapter applicable to traditional insurance companies, except:

- (1) The Commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive such applicable requirements.
- (2) The Commissioner may waive or modify the requirements for public notice and hearing.
- (3) An alien insurer may be a party to a merger authorized under this subsection, provided that the requirements for a merger between a captive insurance company and a foreign insurer under this Chapter shall apply to a merger between a captive insurance company and an alien insurer under this subsection. For the purposes of this subdivision, an alien insurer shall be treated as a foreign insurer under this Chapter, and the domicile of the alien shall be the equivalent to that of another state.

(h) Captive insurance companies formed as reciprocal insurers under this Part shall have the privileges provided in and be subject to Article 15 of this Chapter in addition to this Part, provided that this Part shall control in the event of a conflict. To the extent a reciprocal insurer is made subject to other provisions of this Chapter pursuant to Article 15 of this Chapter, such provisions shall not be applicable to a reciprocal insurer formed under this Part unless such provisions are expressly made applicable to captive insurance companies under this Part.

(i) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(j) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third of the number of its members.

(k) With the Commissioner's approval, a captive insurance company organized as a stock insurer may convert to a nonprofit corporation with one or more members by filing with the Secretary of State an election for such conversion, provided that:

- (1) The election shall certify that, at the time of the company's original organization and at all times thereafter, the company has conducted its business in a manner not inconsistent with a nonprofit purpose.
- (2) At the time of the filing of its election, the company shall file with both the Commissioner and the Secretary of State articles of conversion, including articles of incorporation consistent with this Part and with all other applicable State statutes and laws.

(l) In the case of a captive insurance company formed as a limited liability company, a reciprocal insurance company, or mutual insurance company, any proxy executed by the members, subscribers, and policyholders of each shall be valid if executed and transmitted in compliance with all applicable State statutes and laws.

(m) With the Commissioner's prior written approval, a captive insurance company may establish one or more separate accounts and may allocate to them amounts to provide for the insurance of risks of certain of its parents, affiliates, or members, as the case may be, subject to the following:

- (1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the captive insurance company.
- (2) Amounts allocated to a separate account in the exercise of the power granted by this subsection are owned by the captive insurance company, and the captive insurance company may not be nor hold itself out to be a trustee with respect to such amounts.
- (3) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued in accordance with the laws or rules otherwise applicable to the captive insurance company's assets.
- (4) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the captive insurance company may conduct.
- (5) No sale, exchange, or other transfer of assets may be made by a captive insurance company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless (i) in the case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and (ii) such transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the Commissioner. The

Commissioner may approve other transfers among such accounts, if, in the Commissioner's opinion, such transfers would be equitable.

- (6) To the extent deemed necessary by a captive insurance company in order to comply with any applicable federal or State laws, the captive insurance company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest in the separate account appropriate voting and other rights and special procedures for the conduct of the business of such account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(g).)